

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 239 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

H.N. TRIVEDI

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR JJ YAJNIK for Petitioner

MR NIGAM SHUKLA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/08/96

ORAL JUDGMENT

At the outset, I may say that though reply has been filed in this Special Civil Application by the respondents and the learned counsel for the respondents is also present, but he is unable to give any assistance to the Court as he made a statement that papers are not with him. This case exhibits how the Government of Gujarat is taking litigations which are pending in this Court against it. It is expected of the Government of

Gujarat that in the matter in which it is a party or its officers are party, should provide assistance to the Court to reach the correct decision in the matter, but had failed to discharge that obligation. This is not the only case. Everyday, I am seeing that either the reply has not been filed or if reply has been filed, the files are not with the learned counsel for the State and when the files are not there, he is unable to effectively assist the Court. Be that as it may. The Court has to decide the litigation of the litigant who has approached to it for redressal of grievance whether assistance is provided by the learned counsel for the State or not. Perused the papers and heard Shri J.J. Yagnik, learned counsel for the petitioner.

2. The petitioner, the President of Tantrik Karamchari Mandal, Trijo Varg, Jaher Arogya Vartul, Ahmedabad, filed this petition before this Court wherein prayer has been made for declaration that the members of the petitioner-Union are carrying on the same duties as that of Wiremen and therefore they are entitled to the pay scale of Rs.260-430. Further prayer has been prayed that the respondents be directed to rationalize the designation of the employees of the petitioner-Union into one designation, viz. Operator-cum-Wiremen. The prayer for interim relief has also been made and the interim relief as prayed has been granted by this Court. The interim relief prayed by the petitioner in this Special Civil Application at prar18(C) reads as under:

"To direct the respondents, their servants, men, etc. not to recover the amounts from the petitioners-employees from the salary to be received by them in the next month, during the pendency and final hearing of this petition."

3. The members of the petitioner-Union were appointed on the post of Operators. This fact has not been disputed by the petitioner's counsel. There were three different posts, namely, Operator, Operator-cum-Wiremen and Wiremen in the Department of Public Health, Government of Gujarat. The Union made a representation before the Second Pay Commission known as Desai Pay Commission for revision of pay scale. On the recommendation of the Pay Commission, the pay scale of the Operators were revised from Rs.260-350 to Rs.260-430, by a Resolution dated 20th March 1976. In pursuance of the said Resolution of the Department, pay of all the members of the petitioner-Union was fixed in the revised pay scale of Rs.260-430. Hardly the members of the petitioner-Union could have got the benefit of revision

of pay scale as under the letter dated 24th March 1977, the petitioner-Union has been informed that the Government has decided to revise the pay scale which was so far being allotted to its members as Operators from that of Rs.260-430 to that of Rs.260-350. It appears that the said order was not given effect to as a result of correspondence raised in between the Union and the respondents. The demand of the petitioner was for rationalization of designation of post of Operator. The petitioner-Union also approached to the service Tribunal and stay has been granted, but ultimately that application filed by them has been rejected. Hence the petitioner has approached this Court.

4. The grievance of the petitioner is that the amount paid to its members after revision is not high or huge which would be impossible for the employees to repay the same to the Government, but the question involved is not that of repayment of the amount received by its members. The question involved is of that of proposal of considering the members of petitioner-Union as Operator-cum-Wiremen is not yet finalized by the Government, which is resulting into loss of pay to its members. The petitioner's claim that benefit as the pay scale of Operator-cum-Wiremen or Wiremen is that of Rs.260-430. So far as the claim of the petitioner to designate its members as Operator-cum-Wiremen is concerned, it is difficult to accept the same in this proceedings. The petitioner is a Union and it could have raised industrial dispute in this respect. Whether the post of Operator should be designated as Operator-cum-Wiremen or not or whether both the posts are exactly identical and the same duties are being discharged, are the questions of facts on which this Court sitting under Article 226 of the Constitution of India is not in a better position to decide. To decide these questions, evidence has to be taken and this Court, normally sitting under Article 226 of the Constitution of India, is not taking oral evidence. Moreover, it is not the case where individuals have come up before the Court, but the Union has come. It is true that individual could not have raised such a dispute, but it is a dispute which could have been raised by a Union and in fact it has been raised by Union but not before the appropriate forum. The Union cannot approach this Court under Article 226 of the Constitution of India in each and every case relating to service conditions of its members. Though there may be certain exceptional cases where the Union may approach this Court, but the nature of dispute which has been raised in the present Special Civil Application, cannot be said to be case where the present matter may be taken

in the exceptional clause. It is not a case where validity of any of the Act or Rules framed thereunder or any service Rules framed under Article 309 of the Constitution of India has been challenged.

5. The order impugned in this Special Civil Application is the order dated 23rd March 1977, under which, the pay scale of the Operators was ordered to be reduced. It is a case where the pay scale has been ordered to be reduced of the class of persons and as such, before making such order, the effected persons should have been given a notice and an opportunity of hearing, which precisely has not been done in the present case. The recovery of the amount has been stayed in pursuance of the stay order of this Court in terms of para 18(C) of the Special Civil Application. The recovery has not been effected though pay would have been revised and reduced.

6. In the result, interest of justice will be met in case this writ petition is disposed of with directions to the respondent to consider the matter afresh, after giving notice to the individual employees on the question of reduction of their pay. However, order dated 24th March 1977 is not set aside. The interim relief granted by this Court shall continue till the matter is decided by the respondent. So far as the grievance of the petitioner regarding designation of the post of Operator as 'Operator-cum-Wiremen' and to give pay scale of Rs.260-430, given earlier, is concerned, the same may be considered after hearing representative of the Union. As it is an old matter, the respondent is directed to decide the issue, after hearing the concerned parties, within a period of six months from the date of receipt of certified copy of this order. Interim relief shall continue till decision is taken by the respondent. Rule is made absolute in the aforesaid terms with no order as to costs.

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(sunil)